THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 19985 of 2007

Dated: 29.10.2007

Between:

S. Badruddin.

..... PETITIONER

AND

The Industrial Tribunal-cum-Labour Court,
Godavarikhani, rep. by its Presiding Officer
and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 19985 of 2007

Order:

Assailing the award dated 01.03.2007, passed by the Labour Court, Godavarikhani, in I.D. No. 84 of 2004, in so far as not granting the back wages, continuity of service and attendant benefits, the petitioner filed the present writ petition.

The petitioner was appointed as a Driver in the respondent-Corporation in the year 1983. He was issued a charge sheet dated 23.03.2002 alleging that he unauthorisedly absent from duties from 09.02.2002 to 22.03.2002. Since the petitioner refused to receive the charge sheet, a copy of the same was exhibited on the notice board in presence of two witnesses, and an Enquiry Officer was appointed to conduct a detailed enquiry into the charges and submit a report. The petitioner failed to attend the enquiry on any of the dates given by the Enquiry Officer, and he remained

ex parte. Thereafter, the Enquiry Officer, having conducted a detailed enquiry, held the charges are proved. Based on the findings of the enquiry report, a notice calling upon the petitioner to show cause as to why he shall not be removed from service was issued. Upon considering the explanation submitted by the petitioner thereto, vide order dated 22.06.2002, the respondent-Corporation ordered his removal. Against the order of removal, the petitioner filed appeal and review petition before the appellate and review authorities, which were rejected by orders dated 17.04.2003 and 06.12.2003 respectively. Thereafter, the petitioner raised an industrial dispute in I.D. No. 84 of 2004 and the Labour Court, vide the award impugned in the writ petition, set aside the order of removal and directed the respondent-Corporation to reinstate the petitioner into service as a fresh candidate without back wages and without any monetary benefits. Assailing the award of the Labour Court in so far as denying the back wages, continuity of service and monetary benefits, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned

Standing Counsel for the respondent-Corporation.

The learned counsel for the petitioner submitted that when the Labour Court came to a conclusion that the petitioner is entitled for reinstatement, automatically he is eligible for the back wages as well as the continuity of service and that the award of the Labour Court in so far as denying the back wages and continuity of service is disproportionate to the proved misconduct. He, thus, prayed to set aside the award passed by the Labour Court in so far as denying the back wages and continuity of service and allow the writ petition.

On the other hand, learned Standing Counsel for the respondent-Corporation contended that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and the Labour Court, on re-appreciation of the entire material on record and holding that the punishment of removal of the petitioner from service is not in proportion to the charges proved, and to give one more opportunity to the petitioner for correcting himself, modified the punishment and directed the respondent-Corporation to reinstate the petitioner into service as a fresh candidate, but denied the back-wages and continuity of service, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted alleging that he unauthorisedly absent from duties from 09.02.2002 to 22.03.2002. In the departmental enquiry, the Enquiry Officer held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, on re-appreciation of the entire material on record, though found that the charges are proved against the petitioner, while observing that the punishment of removal of the petitioner from service is disproportionate to the charges proved, and to give one more opportunity to the petitioner for correcting himself, ordered reinstatement of the petitioner into service as a fresh driver without backwages and without continuity of service. Had the Labour Court held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded continuity of service and backwages, but that is not the case. The Labour Court, having held that the charges leveled against the petitioner are proved, has taken a lenient view and ordered fresh appointment. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (see **U.P. State Brassware Corpn.Ltd. v. Uday Narain Pandey**[1]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority, as confirmed by the appellate and review authorities, and ordered reinstatement of the

petitioner into service as a fresh driver on the ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. V. A.L. Mohan Rao**[2], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate and review authorities, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 29.10.2007
Nsr

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1 (2006) 1 SCC 479
2 (2006) 1 SCC 63